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17624  
RECORDATION NO. FILED 1025

DEC 12 1991 -12 45 PM

December 12, 1991 INTERSTATE COMMERCE COMMISSION

Dec 12 12 58 PM '91

The Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Secretary Strickland:

Enclosed for recordation, under the provisions of 49 U.S.C. § 11303(a) and the regulations thereunder, are four original counterparts of an Interim User Agreement, dated as of December 6, 1991, between General Electric Company ("Builder-Vendor"), and National Railroad Passenger Corporation ("Railroad-Vendee"), a primary document.

The names and addresses of the parties to the enclosed Interim User Agreement are as follows:

BUILDER-VENDOR:	General Electric Company Transportation Systems Business Operations 2901 East Lake Road Erie, PA 16531
RAILROAD-VENDEE	National Railroad Passenger Corporation 400 North Capitol Street, N.W. Washington, D.C. 20001

*Enclosed - City Manager*

The Honorable Sidney L. Strickland, Jr.

December 12, 1991

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A general description of the railroad locomotives covered by the enclosed document is as follows:

<u>Description Locomotives</u>	<u>Identification Marks and Road Numbers</u>	<u>GE Serial Numbers</u>
GE Dash 8-32 BWH Locomotives	AMTRAK 500 AMTRAK 503-519, inclusive	46836 46839-46855, inclusive

The undersigned is the attorney-in-fact of General Electric Company. Please return the original of the enclosed document to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850, 1275 K Street, Washington, D.C. 20005-4078 or to the bearer hereto.

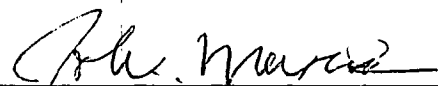
Also enclosed is a remittance in the amount of \$16.00 for the required recording fee.

A short summary of the document to appear in the index follows:

PRIMARY DOCUMENT

Interim User Agreement, dated as of December 6, 1991, between General Electric Company ("Builder-Vendor") and National Railroad Passenger Corporation ("Railroad-Vendee"), relating to eighteen (18) General Electric Dash 8-32 BWH locomotives, bearing AMTRAK identification marks and Road Nos. 500, 503-519 inclusive.

Respectfully submitted,

By   
John K. Maser III  
Attorney-In-Fact

Enclosure  
286-8

Interstate Commerce Commission  
Washington, D.C. 20423

12/12/91

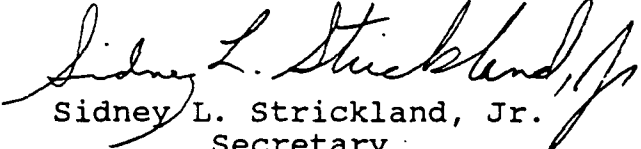
OFFICE OF THE SECRETARY

John K. Maser  
Donelan Cleary Wood & Maser  
1275 K St. N.W. Suite 850  
Washington, D.C. 20005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/12/91 at 12:45pm, and assigned recordation number(s). 17624

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

17624  
DEC 12 1991 - 12:45 P.M.  
INTERSTATE COMMERCE COMMISSION

INTERIM USER AGREEMENT

THIS AGREEMENT, dated as of December 6, 1991, between National Railroad Passenger Corporation ("Amtrak") and General Electric Company ("GE")

W I T N E S S E T H

WHEREAS, Amtrak and GE have entered into an agreement dated December 31, 1990 (the "Purchase Agreement") whereby Amtrak agreed to purchase, inter alia, twenty (20) GE Dash 8-32 BWH locomotive's (the "GE Locomotives");

WHEREAS, Amtrak proposes to enter into a Lease of Railroad Equipment (the "Lease") with a bank or trust company acting as owner trustee for Cargill Leasing Corporation (in such capacity, the "Owner Trustee") pursuant to which Amtrak plans to lease eighteen (18) GE Locomotives to the Owner Trustee;

WHEREAS, Amtrak plans to use the rent due from the Owner Trustee under the Lease to pay the purchase price for the GE Locomotives due to GE under the Purchase Agreement;

WHEREAS, Amtrak desires to have possession of the GE Locomotives to be leased to the Owner Trustee while the Lease and any further documentation contemplated therein is being negotiated; and

WHEREAS, GE is willing to deliver such GE Locomotives to Amtrak hereunder, retaining title thereto to secure payment in full of the purchase price therefor under the Purchase Agreement so that Amtrak, the Owner Trustee and GE may negotiate the Lease and any further documentation contemplated therein, with Amtrak's assurance that payment for such GE Locomotives will be made to GE on or before December 31, 1991, whether or not the Lease is executed prior thereto;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. GE hereby agrees to deliver to Amtrak hereunder, FOB GE's plant in Erie, Pennsylvania the eighteen (18) GE Locomotives more specifically described by Road Number and GE Serial Number in Annex A attached hereto (collectively the "Interim Locomotives"). The Interim Locomotives will be delivered by GE during the month of December, 1991. If any Interim Locomotive is not accepted pursuant to Section 2 on or before December 31, 1991, such Interim Locomotive shall not be subject to the terms hereof.
2. Upon delivery of each Interim Locomotive, Amtrak's representative shall inspect such Interim Locomotive and, if acceptable as provided by the Purchase Agreement, shall execute an Acceptance Notice (Exhibit D of the Purchase Agreement) accepting such Interim Locomotive, with such exceptions as may be appropriate under the Purchase Agreement. For purposes of securing all of Amtrak's obligations hereunder and under the Purchase Agreement with respect to the Interim Locomotives, including, but not limited to, payment of the purchase price therefor, at all times during the term hereof GE shall and hereby does retain the full legal title to and property in the Interim Locomotives, notwithstanding the delivery of the Interim Locomotives to and the possession and use thereof by Amtrak as provided in this Agreement. Amtrak's rights and interest in the Interim Locomotives shall be solely that of possession, custody and use hereunder.
3. Amtrak shall do such acts as may be required by law or reasonably requested by GE for the protection of GE's title to and security interest in the Interim Locomotives.
4. Amtrak shall pay GE for the possession, custody and use of the Interim Locomotives during the term hereof in the amount of

One Dollar (\$1.00) in aggregate, payable in arrears at the expiration of the term.

5. The intended term of this Agreement shall be from the date of delivery of the first of the Interim Locomotives to December 31, 1991, or the date of execution and delivery of the Lease by the parties thereto, whichever first occurs, during which period Amtrak shall have possession, custody and use of the Interim Locomotives pursuant to this Agreement. It is anticipated that, during the term hereof, Amtrak, the Owner Trustee and GE will be able to negotiate and execute the Lease, which shall contain terms and conditions acceptable to said parties, including, but not limited to, application of the rent due to Amtrak under the Lease as payment of the purchase price for the Interim Locomotives, whereupon GE shall transfer title to the Interim Locomotives to Amtrak. However, if, by December 31, 1991, for any reason, an acceptable Lease has not been entered into among GE, Amtrak and the Owner Trustee, then GE may demand the immediate payment in full of purchase price for the Interim Locomotives under the Purchase Agreement by December 31, 1991, and upon receipt of such payment in full the Interim Locomotives shall be deemed delivered to and accepted by Amtrak under the Purchase Agreement (subject to such exceptions as may be set forth in the Acceptance Notice with respect thereto), GE shall deliver a Bill of Sale conveying GE's title to the Interim Locomotives to Amtrak and this Agreement shall terminate. If the Lease shall not have been executed and delivered by such date and Amtrak shall not have paid the Purchase Price for the Interim Locomotives, this Agreement shall continue beyond December 31, 1991, notwithstanding such default hereunder, provided, however, that in the event this Agreement so continues, in addition to GE's right to the Purchase Price, and unless and until GE takes possession of the Interim Locomotives pursuant to Section 11 hereof, Amtrak shall pay GE an amount equal to Four Hundred Six Dollars (\$406.00) per Interim Locomotive for each day beyond December

31, 1991 that the Purchase Price for the Interim Locomotives remains unpaid.

6. In issuing a Bill of Sale to Amtrak, GE shall only be obligated to warrant that title to the Interim Locomotive was free of all claims, liens, security interests and other encumbrances arising from, under or through GE at the time of delivery hereunder, and GE shall not be responsible for claims, liens, security interests or other encumbrances arising thereafter from, under or through others, including, but not limited to, Amtrak.
7. Amtrak shall permit no liens or encumbrances of any kind to attach to the Interim Locomotives. This provision shall apply until GE shall have been paid the purchase price for the Interim Locomotives and shall have delivered its Bill of Sale. Amtrak shall see that there shall be plainly, distinctly and conspicuously marked upon each side of each Interim Locomotive the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO SECURITY  
AGREEMENTS FILED WITH THE  
INTERSTATE COMMERCE COMMISSION

If, during the term of this Agreement, such marking shall at any time be removed, defaced or destroyed, Amtrak shall immediately cause the same to be restored or replaced. Amtrak hereby agrees to indemnify GE against and save GE harmless from any and all claims, damages, losses, expenses or liabilities of whatsoever kind incurred by GE as a result of Amtrak's failure to comply with this paragraph 7 .

8. Except to the extent otherwise provided in the Purchase Agreement, Amtrak shall defend GE against and indemnify and save GE harmless from any and all claims, damages, losses, expenses or liabilities of whatsoever kind, including, but not limited to attorneys' fees and costs, which may arise during the

time any of the Interim Locomotives are in the possession of Amtrak under this Agreement, including, but not limited to, claims of third parties (including, but not limited to, employees of Amtrak) for personal injury (including, but not limited to, death) and claims of Amtrak or third parties for loss of, damage to or loss of use of any property, caused by or in any way related to the use or operation of the Interim Locomotives. Except to the extent otherwise provided in the Purchase Agreement, Amtrak shall furthermore pay any and all fines, charges and penalties that may accrue or be assessed or imposed upon the Interim Locomotives or GE because of GE's ownership thereof or because of the use, operation, management, maintenance, repair or handling of the Interim Locomotives during the term of this Agreement. Amtrak agrees that GE shall not be liable for any tax (other than such a tax on income of GE) that may accrue or be assessed or imposed upon the Interim Locomotives or GE by virtue of this Agreement or the arrangement contemplated hereby and shall promptly pay GE for any such tax accrued, assessed or imposed. The obligations of Amtrak described in this Paragraph 8 shall survive termination of this Agreement.

9. Amtrak shall, at its own expense, keep and maintain the Interim Locomotives in good order and running condition, applying GE's recommended normal maintenance standards and procedures, and shall, at its option, repair or promptly pay in full to GE the purchase price as set forth in the Purchase Agreement for any of the Interim Locomotives which may be damaged or destroyed by any cause during the term of this Agreement other than any damage or destruction caused by a breach of the warranties provided by GE under the Purchase Agreement or by any action of GE for which GE has agreed to indemnify Amtrak under the Purchase Agreement.
10. By execution of this Agreement, neither of the parties waives any provisions of the Purchase Agreement relating to warranty,



exclusion of certain warranties, remedies (and limitation of remedies) and limitation of liability and indemnities.

11. In the event Amtrak shall breach any term or provision of this Agreement including, without limitation, any failure to cause the rent under the Lease to be applied to the payment in full of the purchase price for the Interim Locomotives as invoiced by GE, or, if the Lease is not entered into on or before December 31, 1991, to pay in full the purchase price for the Interim Locomotives on or before such date, GE may, in addition to any other remedies it may have to recover such Purchase Price and any unpaid amount under clauses 4 and 5 hereof (and no other amounts except as provided under clause (c) below), enter upon the premises of Amtrak or such other premises where the Interim Locomotives may be and take possession of the Interim Locomotives, and thenceforth hold, possess and enjoy the same free from any right of Amtrak or its successors or assigns. In such event, unless GE has received the Purchase Price and any amount due under clauses 4 and 5 hereof, for the Interim Locomotives (in which case GE shall return the Interim Locomotives and convey title thereto to Amtrak), GE may use the Interim Locomotives for any purposes whatsoever, and may sell (in a commercially reasonable manner) and deliver the Interim Locomotives to others upon such terms as GE may reasonably see fit, it being understood and agreed that Amtrak shall remain liable to GE for: (a) An amount equal to any difference in the price paid by such other parties and the purchase price due from Amtrak under the Purchase Agreement, plus: (b) Any other unpaid amount hereunder, plus: (c) An amount equal to all expenses of GE incident to such sale including, but not limited to, the expenses of withdrawing the Interim Locomotives from the service of Amtrak, providing for the care and custody of the Interim Locomotives, and preparing the Interim Locomotives for sale, and GE shall, in such event, return to Amtrak any remaining portion of the proceeds from any such third-party sale left after

deduction of the foregoing and any other amounts due GE. In the event that the amounts due GE exceed any remaining portion of the proceeds from any such third-party sale, Amtrak shall pay to GE such additional amounts due upon demand by GE.

12. Amtrak and GE each represent and warrant to the other that:

- (a) It is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement and that it has power and authority to own its properties and carry on its business as now conducted;
- (b) The execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by - laws nor contravene nor constitute a default under the provisions of any agreement or other instrument binding upon it, and this Agreement is a valid and binding obligation, enforceable, subject to applicable insolvency, bankruptcy or moratorium laws, against it in accordance with its terms;
- (c) No governmental authorizations, approvals or exemptions are required for the execution and delivery of this Agreement or for the validity and enforceability hereof or the bailment of the Interim Locomotives hereunder on the terms and conditions provided herein, or, if any such authorizations are required, they have been obtained and, if any such shall hereafter be required, they will promptly be obtained.

13. To the extent inconsistent herewith, the terms of the Purchase Agreement shall be superseded by the terms of this Agreement.
14. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any party hereto may execute this Agreement by signing one or more counterparts.

IN WITNESS WHEREOF, each of the parties hereto has cause this Agreement to be executed by its authorized representative effective as of the date first above written.

NATIONAL RAILROAD PASSENGER  
CORPORATION

BY Chas W Hayward

TITLE Vice President Finance & Administration

GENERAL ELECTRIC COMPANY

BY J. G. Hall

TITLE Mgr - Transportation Sup. Finance Oper.

## ANNEX A

### INTERIM LOCOMOTIVES

<u>Description of GE Locomotives</u>	<u>Road Numbers</u>	<u>GE Serial Numbers</u>
GE Dash 8-32 BWH Locomotives, more particularly described in the Purchase Agreement	500 503-519, inclusive	46836 46839-46855, inclusive

Commonwealth of Pennsylvania)

) ss:

County of Erie )

On this 10th day of December, 1991, before me personally appeared T. P. Saddlemire, to me personally known, who, being by me duly sworn, says that he is Manager-Transportation Systems Finance Operation, of Transportation Systems Business Operations of General Electric Company, that the foregoing instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Carol A. Wahlen

Notary Public

My Commission expires:

Notarial Seal  
Carol A. Wahlen, Notary Public  
Lawrence Park Twp., Erie County  
My Commission Expires Dec. 12, 1994

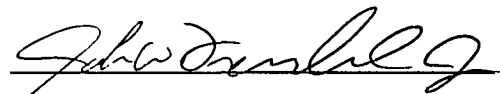
District of )

) SS:

Columbia )

On this 12th day of December, 1991, before me personally appeared  
Charles W. Hayward to me personally known, who, being  
Vice President  
by me duly sworn, says that he is Finance & Administration of National  
Railroad Passenger Corporation, that the foregoing instrument was duly  
executed on behalf of said corporation, and he acknowledged that the  
execution of the foregoing instrument was the free act and deed of said  
corporation.

[NOTARIAL SEAL]

  
Notary Public

My Commission expires: 1/1/95